

Nathmal

Vs

The State of Rajasthan and Others

Bhagwandas

Vs

The State of Rajasthan and Others

Writ Petitions Nos. 550 and 551 of 1974

(A. Alagiriswami, M. H. Beg, N. L. Untawalia JJ)

01.05.1975

JUDGMENT

UNTWALIA, J. –

1. These are two writ petitions under Article 32 of the Constitution of India by two persons who are brothers asking for writs of habeas corpus against their allegedly illegal detention made pursuant to the orders of the District Magistrate, Sikar (Rajasthan) under Section 3(1) read with Section 3(2) of the Maintenance of Internal Security Act, 1971. Nathmal is the petitioner in Writ Petitioner No. 550/1974 and his brother Bhagwandas is the petitioner in the other writ petition. The facts of the two cases are common and the point involved in them are identical. They are, therefore, being disposed of by a common judgment.

2. There does not seem to be any infirmity in the due observance of the legal formalities under the Maintenance of Internal Security Act, yet, for the reasons to be stated hereinafter the detention of the petitioners is not legal and valid. The facts necessary to be stated for disposal of the two petitions are these. From June 29, 1974 to July 1, 1974 shop and other premises of the petitioners were searched and large quantities of certain commodities were recovered. In the opinion of the District Magistrate it became necessary to detain the two brother under the Maintenance of Internal Security Act. He, therefore, passed separate orders against them but in identical terms on July 8, 1974 under subclause (iii) of clause (a) of sub-section (1) of Section 3. The grounds served are also identical and are as follows :

1. You are a partner of the firm M/s. Ramesh Kumar Bhagwandas in town Sikar, and you are dealing in business of essential and useful commodities for life like soaps, tea, blades, battery cells and matches. From the date June 29, 1974 to July 1, 1974, district police, Sikar, raided and look search of your house, shop and godowns situated at Sikar and from your possession recovered 94,981 matchsticks (sic boxes), 1,724 bathing soap cakes, 10,645 cloth washing soap cakes, 4,815 cloth washing soap bars, 10,745 blades and 2,465 battery cells. You had no displayed price list and stock position on your KAROBAR (Business) which was necessary to be displayed under Essential Commodities Act, 1955 read with the Rajasthan (Display of Prices of

Essential Commodities) Order, 1966.

2. On June 29 and 30, 1974 the Drug Inspector took search of your godown situated at Sikar and recovered therefrom pain-relieving medicines i.e. 1301 tablets of Novalgin, 980 tablets of Seridon, 620 tablets of Avedan, 900 tablets of Analzin, 2000 tablets of Anandkar; for possessing and selling which you had not obtained a licence. You had unlawfully hoarded these pain-relieving medicines which are useful for life, for profiteering in view the scarcity of these in the market.

3. You had hoarded unlawfully these essential articles useful for life in such large quantity with the intention of profiteering by selling them in the black market, so that, you may create an artificial scarcity with the object of charging any price you like from the customers. Because there is scarcity of these articles in the market at this time and the public is feeling difficulty in procuring them, and as such you have made their availability difficult for the public by hoarding them for your selfish and unlawful profiteering.

4. In this way you have created a great obstruction in the supply of essential articles useful life to the public. Hence for the purpose of preventing you from carrying on such activities in future and for the purpose of facilitating the availability of these essential to detain you and therefore you have been detained under Section 3(1)a(iii) of the Maintenance of Internal Security Act, 1971. By this you are informed of the grounds of detention as required by Section 8 of the said Act.

3. The case of the petitioners is that the two brothers along with their father migrated to Sikar from Pakistan as refugees. They started business under the name and style of M/s. Ramesh Kumar Bhagwan Das. Their father Gopal Das started the business of selling carried on in the name of the aforesaid firm on or from the month of January, 1970. They have been carrying on the business of general merchandise. According to the petitioners case the business was carried on in the wooden cabins (thadies) in Jatia Bazar, Sikar, where several refugees from Pakistan started carrying on their business in wooden thadies. It is claimed that petitioner Bhagwandas was the President of the Association of Thadi Merchants. It is stated that the Administrator, Municipal Council, Sikar without giving any notice to any of the holders of the shops in thadies with the help of a large number of employees of the Municipal Council, police constable and official removed all the thadies by force on June 28, 1974. The petitioners show was removed in such a brutal and ruthless manner that all the articles of the merchandise in the shop were scattered here and there in the bazar. They assert that they had to collect the same and shift them to their godown, house and a shop which is said to be in occupation of their father. The thadi-shopkeepers, under the leadership of one of the petitioners carried on an agitation against the demolition of the thadies. Meetings were held, deputations were taken to the officials and the shopkeepers went on a strike from June 29, 1974. In these circumstances as also on some other grounds the petitioners challenged their detention.

4. In the counter-affidavit filed on behalf of the District Magistrate the facts asserted by the petitioners are denied. It is claimed that after the demolition of the wooden cabins, the two petitioners continued their business in the shop below Dr. J. P. Tak's residence where they were carrying on their business even while carrying on their business in wooden thadies. According to the averment in the counter-affidavit the shop from where certain articles were recovered did not belong to the petitioner's father. It belonged to the petitioners. It is further asserted that neither of the petitioners was a leader on behalf of the thadi-holders. It is, however admitted that a deputation

under the leadership of Shri Goverdhansing, M.L.A., had met the District Magistrate who assured the deputation that he would look into their problems and use his good offices.

5. The petitioners filed their rejoinders to the counter-affidavit. While reiterating their stand made in paragraph 2 of the writ petition it was stated in the rejoinder that even assuming that the shop below Dr. Tak's residence belonged to the petitioners the same was closed on June 29, 1974 like all other shops in the town. There was general strike on June 19, 1974 in protest against the alleged high handedness of the police and the municipality in removing the wooden thadies the previous day. In such a situation there could not possibly be any price or stock list at the shop. In the further affidavit filed in reply to the rejoinder on behalf of the District Magistrate with reference to the petitioner's case of their shop being closed due to general strike it was asserted that on June 29, 1974 there was no general strike. Only about 10% of the shops remained closed and that too upto 11.00 a.m. or so. The shop of the petitioners is said to have been searched when there was no strike whatsoever.

6. It was argued on behalf of the petitioners that on the basis of the facts disclosed in the grounds and appreciating them in the context of other circumstances no person could have reasonably come to the conclusion that the petitioners were acting or likely to act in a manner prejudicial to the maintenance of supplies of essential commodities. It was further contended on their behalf that the ground were vague and order of detention were passed against the petitioners male fide.

7. We think that the order of detention made against the petitioners are not fit to be sustained in the eye of law. The Rajasthan (Display of Prices of Essential Commodities) Order was promulgated in the year 1966. According to the order as originally made only a price list had to be display at the business premises. By an amendment made on December 8, 1971, the requirement of display of stock list also became obligatory. With reference to ground No. 1 it would have been difficult to take the view that mere recovery of the quantities of certain articles mentioned in that ground from the premises of the petitioners without there being may allegation of violation of any law other than the order of 1966 would be sufficient to lead to the conclusion that the petitioners had acted in any manner prejudicial to the maintenance of supplies of essential commodities. In that event one could say that there was no nexus between the ground and the order of detention. The Rajasthan (Display of Prices of Essential Commodities) Order, 1966 made it imperative for the petitioner to display price and stock list so that persons going for purchase may know the correct stock position and the price. But, if the shop was not open on the day under consideration the petitioners could not be expected to display the prices or stock list on that day. In so far as it was assumed to be open an extraneous consideration had entered into the case. If it was assumed that ground No. 1 existed when in fact, it obviously did not this ground was vitiated. Thus defect was sufficient to vitiate the whole detention order for introduction of an extraneous non-existent ground.

8. As regards recovery of many drugs from the petitioners premises as mentioned in ground No. 2 it was presumed that they were kept for the purpose of sale without a licence in violation of the Drugs and Cosmetics Act, 1940. In neither of the ground, however, it was alleged that the petitioners had refused to sell any of the articles to any of the customers. Even assuming that the violation of the law coupled with recoveries of large quantities of essential commodities and medicines could lead to the inference that the petitioners intended to hold them for profiteering yet one thing is plain. On the special facts and in the circumstances of this case we find no clear averment that the petitioners' shop was open for transacting any business. In the background of the event of demolition of thadies followed by deputation to the District Magistrate it is quite legitimate to assume that the petitioners' case that there was a strike on June 29, 1974, is correct. We do not accept their case that shop below Dr. Tak's residence was not theirs but of their father. But in absence of a specific denial in the

further affidavit filed on behalf of the District Magistrate in reply to the petitioner's rejoinder we believe that their shop was not open for transacting any business. Whether the petitioners were, otherwise, justified in closing their shop or not surely they were not expected to display the price and stock list in the shop when as a protest to the demolition of their thadi they had gone on strike and had refused to transact any business in the shop. The search of the petitioners' premises was in such a close juxtaposition of the demolition of their thadi that the whole conspectus of events does not leave a happy impression in our minds as to the justifiability and legality of the detention orders made against the petitioners. It appears to us that the power of detention was not exercised in this case in a fair, proper and legal manner. On the particular facts of this case, even though the satisfaction of the detaining authority was to be subjective under the law, it seems to us that extraneous factors introduced an infirmity which can justify the Court's interference with the order of detention.

9. Strong reliance was placed on behalf of the respondent upon the decision of this Court in *Kamla Prasad v. D. M., Saran* ((1975) 1 SCC 314 : 1975 SCC (Cri) 141) to which one of us (Untwalia, J.) was a party. It will be noticed from the facts of that case that grounds in effect stated that the petitioner had hoarded and concealed the essential commodities in his business premises as also in his residential house and that he did not display the stock position in his business premises and further when the customers wanted to purchase soaps and matchboxes he refused to sell them saying that he had no stock. In such a situation it was alleged that the petitioner had hoarded the stock with the intention of selling them in blackmarket with a view to make undue profit. It is no doubt true that in paragraph 6 of the judgment it is said that from the mere fact that the petitioner did not display the stock of matchboxes and soaps in the business premises the only possible conclusion was that he was hoarding the stock for the purpose of selling it in blackmarket and thus make undue profit. But the said dictum had to be appreciated in the background of the entire facts of *Kamla Prasad's* case (*supra*). The refusal to sell to the customers clearly showed that even though the business was being carried on in the premises the stock position was not displayed. On the other hand, on the fact of this case, we are not satisfied that there was failure on the part of the petitioners to display the price and stock list in their shop or that it could lead to the conclusion that their intention necessary was to hoard the good and do any blackmarketing or profiteering. No instance of any sale at blackmarket rates was given.

10. For the reasons stated above we allow both the applications and direct that the petitioners be set at liberty forthwith.

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